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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,089	07/22/2003	Jay S. Walker	97-054-C2	8766
7590	10/24/2005			
Dean P. Alderucci Five High Ridge Park Stamford, CT 06905			EXAMINER AGWUMEZIE, CHARLES C	
			ART UNIT	PAPER NUMBER
			3621	
DATE MAILED: 10/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/625,089

**Applicant(s)**

WALKER ET AL.

**Examiner**

Charlie C. Agwumezie

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 185-194 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 185-191 and 193 is/are rejected.
- 7) ☒ Claim(s) 192 and 194 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/02/04; 03/22/04; 03/25/04; 07/22/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

1. Claims 185-194, are pending and has been examined.

### ***Claim Objections***

**Claims 192 and 194**, are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Furthermore, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd Pat.App. & Inter. 1987). Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

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F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 185-191 and 193** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 10-12 of U.S. Patent No. **6,598,024**.

Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 1 of the U.S. Patent No. 6,598,024 is obvious variant of claims 185 and 193 of the current application since the only difference is a mathematical variation of U.S. Patent 6,598,024. Round-up amount is mathematical equivalent of proportional to the round-up amount.

Claim 186 is verbatim copy of Patent claim 2; Claim 187 is a verbatim copy of Patent claim 3; Claim 188 is a verbatim copy of Patent claim 4; Claim 189 is a verbatim

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copy of Patent claim 5; Claim 190 is obvious variant of Patent claim 11; Claim 191 is verbatim copy of Patent claim 12.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify claims 1-5 and 11-12 of the U.S. Patent No. 6,598,024 by adding and/or removing the limitations resulting generally in the claims of the present application since the present application and the claims recited in U.S. Patent No. 6,598,024 actually perform the same or similar function. It is well settled that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. *In re Karlson*, 136 USPQ 184 (CCPA 1963; Also note *Ex parte Rainu*, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles C. Agwumezie whose number is **(571) 272-6838**. The examiner can normally be reached on Monday – Friday 8:00 am – 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on **(571) 272 – 6712**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

**Washington D.C. 20231**

Or faxed to:

**(571) 273-8300**. [Official communications; including After Final communications labeled "Box AF"].

**(571) 273-8300**. [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"].

Hand delivered responses should be brought to the Examiner in the Knox Building, 50 Dulany Street Alexandria VA.

acc  
October 6, 2005

*James Trammell*  
Primary Examiner  
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